

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 1217 (SS) OF 2001
(Old No. 38931 of 1999)

Zia-ul-Islam,
S/o Intezar Hussain,
R/o Village & Post Pratappur,
District- Udham Singh Nagar. Petitioner.

Versus

1. State of U.P., through Chief Conservator of Forest Lucknow.
2. Conservator of Forest Western Circle Nainital.
3. Divisional Forest Officer, Western Tarai, Forest Division, Ram Nagar. Respondents.

*Mr. Asif Ali, Advocate for the petitioner.
Learned Standing Counsel for State of U.P. and Uttaranchal.*

Dated : 27.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to appoint the petitioner to the substantive post in place of the father in accordance with Dying in Harness Rules.

Briefly stated, the father of the petitioner namely Sri Intezar Hussain, who was Jamadar of Ramnagar Forest Division, died on 15.10.1995 in harness. He left behind petitioner as his son and his wife Smt. Khatoon Begum.

After the death of her husband, Smt. Khatoon Begum received the payment of pension and consequential dues. The petitioner and his mother Smt. Khatoon Begum wrote several

letter for appointment of the petitioner on compassionate ground, who is the only person to look after Smt. Khatoon Begum.

Petitioner has submitted that he was moved several representations and last has been moved on 17.04.1999 where by he has requested to be appointed in place of his father, but the same has not yet been decided while all the applications had been sent well within the time limit prescribed.

The Apex Court in the case of ***Sushma Gosain Vs. Union of Union and others (1989) 4 SCC 468*** has observed as under:-

“We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468***. The relevant observations are quoted below:-

“The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The

Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family.”

“It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, the respondents are directed to consider the application of the petitioner as the same has been filed well within time limit for compassionate appointment under Dying in Harness Rules adopted by the State of Uttaranchal within a period of two months from the date of presentation of the certified copy of the order.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

27.03.2006

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Hon. Rajesh Tandon J.

Typing error has been pointed out in the judgment by the office.

Let it be corrected forthwith. Correction also be made in the certified copy accordingly

(Rajesh Tandon J.)

4-5-2006